

## **Restrictive Covenants & Amendments Of Falling Water Heights**

Whereas, the undersigned James E. and Mary Katherine Folkner are the beneficial owners of certain property in Hamilton County, Tennessee being the property platted as lots one (1) through nineteen (19) Falling Water Heights, phase no. 1, as shown by plat recorded in plat book 40, page 150, in the Registers Office of Hamilton County, Tennessee;

Whereas, it is the plan of the developers to devote the lots in said phase of said subdivision to restricted residential purposes;

Now therefore, in consideration of the premises, and for the protection of the present owners, as well as the future purchasers of lots in said subdivision this declaration and agreement is made;

Each and every conveyance of any one of said lots shall be subject to conditions, reservations, covenants and agreements, which will run with the land as follows:

1. All of said lots in said subdivision shall be known and described as, residential lots, and no structure shall be erected, altered, placed or permitted to remain on any residential building lot other than one detached single family dwelling with garage, which may also be located in the basement, and which must be for a minimum of two cars. The garage doors must open from the side or rear elevations of the residence.
2. No residence shall be designed, patterned, constructed or maintained to serve for the use of more than one single family, and no residence shall be used as a multiple family dwelling at any time, nor used in whole or in part for any business service or activity, or for any commercial purpose; nor shall any lot be used for business purposes, or for trucks or other equipment inconsistent with ordinary residential uses.
3. No building shall be located on any lot nearer than 50 feet to the front lot line or nearer than 20 feet to any side street line, or nearer than 20 feet to any interior lot lines; further, there are certain set-back requirements provided for and shown on the subdivision plat, which are incorporated in and made part of these Restrictive Covenants. No structure, other than a swimming pool, outdoor fireplace, et., of approximate ground level construction shall be located nearer than 35 feet to the rear lot line. For the purposes of this covenant, eaves, steps, and open porches and patios shall not be consider as part of the building, providing, however, this shall not be construed to permit any portion of the building on the lot to encroach upon another lot. No provision of this paragraph shall be construed to permit any structure to be constructed and erected upon any lot. That does not conform to the the zoning laws and regulations applicable thereto. All houses shall face and enter from the subdivision street.
4. It is provided that not more than one dwelling house shall be reacted or maintained on one lot. This will not prevent the use of one or more lots or parts of lots as a single building plot of ground, providing that the division or re-arrangement of boundary lines

of subdivision lots shall not reduce the basic width and size of the original lots as platted, or increase the total number of lots in said phase of said subdivision, and the same shall conform to zoning laws, subdivision regulations in effect thereon.

5. No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. In particular, tractor trucks, boats, motorhomes, or disabled automobiles shall not be frequently or habitually kept parked in the streets or on a driveway herein, nor carry on major repairs to said autos in driveways or streets.

6. No structure of temporary character, including trailers and similar structures, shall be erected or permitted to remain on any lot except a construction trailer during the period of construction. The intent being to prevent the use of a garage, incomplete structure, trailer, barn, tent, outbuilding or other structure as a temporary living quarters before pending the erection of a permanent building. No structure on any lot shall be occupied until a dwelling house, including yard work, conforming fully to the provisions of this instrument, shall have been erected and fully completed thereon. Once the footings of any buildings shall be poured, construction must progress continuously (with allowances for weather conditions, labor conditions and availability of materials) until the building is fully completed, and the exterior (including yard work) must be completed within one year from commencement of construction. Otherwise the owner of any lot violating this provision (7) shall be liable to James E. and Mary Katherine Folkner, or their heirs or assigns, in damages at the rate of Ten and No/100 (\$10.00) dollars per day, until said exterior and all yard work are completed and to payment of such court costs and attorney's fees as may be incurred in the enforcement of this provision. There shall be no detached garages, outbuildings or servants quarters, but a bathhouse built expressly in conjunction with a private swimming pool shall not be included in this prohibition. Thus a bathhouse will not have to be connected or attached to the dwelling. However, such a structure shall not be included in complying with any minimum square footage requirements as set forth in (7) below.

7. No dwelling house shall be erected or permitted to remain in the subdivision unless it has the number of square feet of enclosed living area, exclusive of open porches or screened porches, carports, garages or basements, set forth in this paragraph. For the purposes of this paragraph, stated square footage shall mean the minimum floor area required, and floor area shall mean the finished and heated living area contained within the residence, exclusive of open or screened porches, garages, or basements. In the case of houses which are known as "split-levels" in order for a level to qualify as main living area, it must be exposed for full height on three sides. In the case of any question as to whether a sufficient number of square feet of enclosed living area have been provided, the decision of James E. and Mary Katherine Folkner, their successors, designates, or assigns, shall be final. The number of square feet required is 2000; 1500 of which shall be on one floor.

8. It is understood that James E. Folkner, or his heirs or assigns, shall have the right and power in his own discretion to rearrange, boundary, lot or division lines in shape or in

size, without liability, providing the same shall conform to zoning laws applicable to the property, and does not result in an increase in the number of lots in the subdivision. No part of any lot shall be used for purposes of a road right-a-way. That no lot shall be re-subdivided without the written permission of James E. and Mary Katherine Folkner, or their heirs or assigns, reserves untoit self the right to re-subdivide any or all lots so long as it meets subdivision regulations of Hamilton County. In any event, this Restrictive Covenant shall apply to only the outside boundary line of any building lot formed by such replating, or by the combination of two or more lots, or parts of lots. No part of lots may be used as access to any other property outside of this subdivision without written consent of James E. and Mary Katherine Folkner, or their heirs or assigns, and consent must be recorded in the Registers Office of Hamilton County, Tennessee.

9. The exterior front and side elevations of all buildings shall be of natural stone, or brick or Masonic. All retaining walls shall be of natural stone, or brick finish. If masonite is used, 1/3 of the wall must be brick or natural stone. All roof pitches must be 8/12 or greater. All homes shall be constructed to face the street or road of subdivision on which lot is located. No lot may be entered directly from Roberts Mill Rd.

10. No fence, hedge or similar type divisional barrier may be maintained on the front of any of said lots, to detract from the continuity of the development desired. Fences around the back or side yard, must be approved in writing, by us and be recorded in the Register's Office of Hamilton County Tennessee. The rear 15 feet of each lot shall be a greenspace for a natural buffer or a power easement if required by developer or owner with no structures, fences, or other apurtenances to mar the natural beauty, except for lots 16, 17, 18, and 19; and a 5 foot natural buffer along Roberts Mill Rd.

11. Each residence constructed upon a lot in said subdivision must be served by a concrete, or pea gravel concrete driveway, with the curb cut out, leaving 2 inches of curb above pavement. All driveway cut-ins from the main street shall be approved prior to construction.

12. In the construction of a residence upon a lot, the builder shall keep all debris cleared from the street or streets bounding the lot; and, before any residence is occupied, all debris must be removed from the entire lot.

13. Before any construction is commenced or carried on, plot plans, health department approval, color schemes, and specifications for any dwelling house to be constructed on any one of the said lots shall be summated for approval to James E. Folkner or his heirs or assigns, and written approval thereof procured. The developer's decision as to square footage, design, placement, and all other aspects are final, binding and may not be or challenged. It is stipulated that such approval shall not be unreasonably with held. It is further provided that, in the event of completion of any dwelling house on any lot, without any proceedings having been instituted in the Courts of Hamilton County, Tennessee, to enjoin the construction there of, the said dwelling shall be conclusively presumed to have such approval.

14. No sheep, swine, goats, horses, cattle, burros, fowl or any like animals shall be permitted to be kept or to remain on any of the lots here in above described, or to roam at large on any of the streets or ways in or bordering the same. There shall be no kennels permitted on any lot in the subdivision. Nor shall the commercial breeding or boarding of animals to be permitted. No liquor, beer, wine, or any other intoxicating substances shall be sold within the bounds of said subdivision.

15. Whether expressly stated so or not in any deed conveying one or more of said lots, each conveyance shall be subject to existing governmental zoning and subdivision ordinances or regulations in effect there in.

16. All of said lots in said subdivision must, from the date of purchase, be maintained by the owner in a neat and orderly condition (grass being cut when needed as well as leaves, broken limbs and other debris being removed when needed). Tree limbs, rocks and other debris must be kept out of the streets. In the event that an owner of a lot in said subdivision fails of his own volition, to maintain his lot in a neat orderly condition consistent with these restrictions, James E. Folkner, his duly appointed agent or his heirs or assigns, may enter upon said lot without liability and proceed to put said lot into an orderly condition, billing the cost of such work to the owner, and placing a lien on said lot if bill is not paid in a timely fashion.

17. Before any dwelling on said premises shall be occupied, a septic tank, or sewage disposal system, constructed in accordance with the requirements of the Tennessee State Board of Health and the Hamilton County Health Department, shall be installed; all sewage from the premises shall be turned into such sewage disposal facility, and the same shall be continuously maintained in proper state of sanitation. The effluent from such septic tank or sewage disposal facility shall not be permitted to discharge into a stream, storm sewer, open ditch or drain unless first it has been passed through an absorption field approved by the public health authority.

18. The majority of the trees may not be removed from any lot except in the area of the lot upon which the house and driveway are to be constructed or for view. Excessive removal of trees will be deemed to be a nuisance to the adjoining neighbors and will mar the beauty of the subdivision.

19. All of the streets and roadways shown on the plat of survey are hereby dedicated to the public use for street and roadway purposes and shall be subject to the duly constituted public authorities. Any damage done to the street or curbing by the owner of any lot or by a contractor employed to build a residence on any lot will be repaired immediately at the expense of the owner or contractor. All property owners in the subdivision are requested to aid in keeping cars, trucks and delivery vehicles off the curbs of the streets, as the same can easily be broken, particularly when new. Also, all owners of lots must keep the streets clean and clear of concrete blocks, concrete and building materials while residence is under construction.

20. In event that, for any reason, any one or more of the foregoing protective covenants

and restrictions be construed by judgment or decree of any court of record to be invalid, such action shall affect in no way any of the other provisions, which shall remain in full force and effect, the owners hereby declaring that said restrictions are not interdependent, but severable but serve able, and any one would have been adopted even without the others

21. James E. and Mary Katherine Folkner and James A. Folkner here by reserve unto themselves, and unto their heirs, successors or assigns, the right and privilege of using any one or more lots, or any parts there of, for roadway purposes, to provide access to adjoining lands; and, further reserve the right and privilege of dedicating same to public use forever.

22. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between 2 and 6 feet above roadways shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines, and a line connecting them at points 25 feet from the intersection of the street lines extended. The same sight line limitations shall apply on any lot within 10 feet from the intersection of a street property linewith the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances or such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

23. No sign of any advertising nature shall be permitted on any lot or building; or Roberts Mill and Selcer Rd.; however, signs may be erected by the subdivision owners And/or builders and selling agents during the development and sale of a lot. This shall not preclude the placing of "For Sale" and "For Rent" signs on lots and homes in the Subdivision, not to exceed a height of 4 feet, and a width of 3 feet. No satellite receiver or dish or similar device may be installed, unless concealed from view. No outside clothes lines of any kind will be permitted on any lot where it is visible.

24. That for the purpose of property improvement, as long as they retain record ownership in any lots in the subdivision, James E. and Mary Katherine Folkner and their heirs or assigns reserve the right to grant waivers from these Restrictive Covenants. Said waiver must be in writing and recorded in the Register's Office of Hamilton County, Tennessee. Any waiver executed by them would be conclusive proof that the waiver would not materially affect the in purpose sought thereby, by the developer. Other owners of lots in the subdivision shall not be entitled to bring suit to enforce the compliance of the original restrictions, where a waiver has been given by the developer unless it is a violation of the restrictions as waived or modified. Nor is the owner entitled to damages from the developer for any waivers granted by him.

25. It is further understood that James E. Folkner in his sole discretion, may grant minor variances which he may deem do not adversely affect the development of the property. So long as James E. and Mary Katherine Folkner or their heirs or assigns shall own fifty percent (50%) or more of the lots in the subdivision, they may amend the Restrictive Covenants contained herein with out the joinder of any other party, provided the lots in the Subdivision may not be used for any other purpose other than a single family-

residence.

Each and every one of the aforesaid covenants, conditions, and restrictions shall attach to and run with each and every of the said lots of land and all title to, and estates there in, shall be subject there to and the same shall be binding upon each and every owner and occupant of the same until January 1, 2020, and shall be extended automatically to apply to each of said lots for successive periods of ten (10) years unless by action of a majority of those owners of the lots, it is agreed to change said covenants in whole or in part, provided further that the instrument evidencing such action must be in writing and shall be duly recorded in the Register's Office of Hamilton County, Tennessee.

Neither the undersigned nor any party or parties claiming under him shall or will convey, devise or demise any of said lots or any part of same except as being subject to the said covenants, conditions and restrictions, and the obligation to observe and perform the same. The sign covenants, conditions and restrictions shall run with and be appurtenant to the said land and every part of the said land or the improvements to be made there on.

If the undersigned or any party or parties claiming there under shall violate or attempt to violate any of the covenants or restrictions here in provided before January 1, 2020, or within the extended time as here in before provided, it shall be lawful for James E. Folkner, his heirs, successors or assigns, or either persons owning any lot or lots in said development or subdivision to prosecute any proceedings at law or in equity against the person or persons or persons violating or attempting to violate any such covenants or conditions and either to prevent him or them from so doing, or to recover damages or dues for such violation, including reasonable attorney's fees.

#### First Amendment To Restrictive Covenants

Re: Restrictions recorded in book 3324, page 996, as amended by Restrictive Covenant, Phase No. one (1), Falling Water Heights, recorded in book 3759, page 228, in the Register's Office, Hamilton County, Tennessee.

The referenced Restrictive Covenants are amended as follows:

1. The lots subject to said Restrictive Covenants are Lots 1 through 50, inclusive, of Falling Water Subdivision.

2. A new paragraph 26 is as follows:

"26. All mail box supports shall be constructed of brick or stone."

3. The expiration date is extended from 2020 to 2030, subject to further extension as provided in the Restrictive Covenants.

Except as here by amended, said Restrictive Covenants remain in full force and effect.

## Second Amendment To Restrictive Covenants

Restrictions recorded in book 3324, page 996, as amended Restrictive Covenants, Phase one (1), Falling Water Heights, recorded in book 3759, page 228, in the Register's Office of Hamilton County, Tennessee, and as further amended by first Amendment to Restrictive Covenants recorded in book 4315, page 351, said Register's Office.

The referenced Restrictive Covenants are amended as follows:

1. As to all lots vacant at the time of the recording of this Second Amendment, the minimum square footage for each residence is increased by 200 square feet from 2,000 square feet to 2,200 square feet
2. Paragraph 22 of the Restrictions recorded in book 3759, page 228, said Register's Office is amended to add the following: The owner of each lot shall landscape the house and lot within twelve (12) months after the initial occupancy of the residence pursuant to a landscape plan approved by James A. Folkner or his successor to the rights and obligations set fourth in the restrictions. Each residence must have an energy efficient heating and cooling system featuring either a dual-fuel gas and electric system, or an electric heat pump, shielded from view from the street by a brick or stone wall or shrubs. The brick or stone mail box support shall have a lighted lamp on the top with an effective illumination of not less than 40 watts.
3. All of the rights and obligations under the referenced Restrictions are assigned to and assumed by James A. Folkner, the sole owner of the unsold property subject to the Restrictions.

Except as hereby amended, said Restrictive Covenants remain in full force and effect.

## Third Amendment To Restrictive Covenants

Re: Restrictions recorded in book 3324, page 996, as amended by Restrictive Covenants, Phase No. one (1), Falling Water Heights, recorded in book 3759, page 228, and as further amended by first Amendment to Restrictive Covenants recorded in book 4315, page 351, in the Register's Office of Hamilton County, Tennessee.

The referenced Restrictive Covenants are amended as follows:

1. In Restrictive Covenants recorded in book 3759, page 228, said Register's Office, paragraph number seven (7) the number of square feet required is amended from 2,000 to 2,200 square feet, 1,500 of which shall be on one floor.
2. In Restrictive Covenants recorded in book 3759, page 228, said Register's Office, paragraph number nine (9) is amended to read, if masonite is used one-half (1/2) of the wall must be brick or stone rather than one-third(1/3).

3. A new paragraph number twenty-seven (27) is added as follows:

A landscaping plan must be submitted to and approved in writing by James A. Folkner, his heirs, successors and assigns. All landscaping pursuant to the plan, must be installed within twelve months of approval.

Except as previously and hereby amended, said Restrictive Covenants remain in full force and effect.

#### Fourth Amendment To Restrictive Covenants

Re: Restrictive Covenants recorded in book 3324, page 996, as restated and revised in book 3759, page 228, as amended in book 4315, page 351, book 5117, page 651, and in book 5443, page 217, in the Register's Office of Hamilton County, Tennessee.

The referenced Restrictive Covenants are amended to also apply to lots thirty-two (32), thirty-eight (38), fifty-seven (57), fifty-eight (58), fifty-nine (59), sixty-one (61), sixty-two (62), and sixty-three (63) of Falling Water Heights subdivision, as shown on plat recorded in plat book 60, page 191, in the Register's Office of Hamilton County, Tennessee, and those cross-hatched areas (future lots) shown on said plat as lots twenty-four (24) through thirty-one (31): lot thirty-three (33), lot thirty-seven (37), lots thirty-nine (39) through forty-three (43), lots forty-five (45) through forty-eight (48), lot fifty (50) through fifty-three (53) and lots fifty-five (55) and fifty-six (56), as said future lots may be reconfigured by subsequent plat (s) recorded in the Register's Office of Hamilton County, Tennessee.

The referenced Restrictive Covenants are further amended to add a new paragraph 28 as follows:

"28. Developer contemplates the creation of an association of homeowners to manage and maintain the entrance and other amenities in the subdivision. When the association is formed, the owners of all lots conveyed by developer after this date and on which a residence has been constructed must be a member of the association and be subject to any assessments approved by not less than fifty percent (50%) of the members of the association."

Except as previously and hereby amended, said Restrictive Covenants remain in full force and effect.

#### Fifth Amendment To Restrictive Covenants

Re: Restrictive Covenants recorded on book 3324, page 996, as restated and revised in book 3759, page 228, as amended in book 4315, page 351, book 5117, page 651, book 5443, page 217, and in book 5508, page 958, in the Register's Office of Hamilton County, Tennessee.

The referenced Restrictive Covenants are amended as follows:

1. No residence shall be erected in the Subdivision unless it has a minimum of 2,400 square feet of enclosed, finished and heated living area, exclusive of open porches, screened porches, carports, garages or basements. Not less than 1,500 square feet of the 2400 square feet minimum shall be on one floor.
2. All roofs must have an 8/12 pitch or greater and be covered with dimensional shingles having a minimum weight of 240 pounds per square, or with other material approved in writing by James A. Folkner or his representative designated by notice recorded in the Register's Office of Hamilton County, Tennessee.
3. The front and sides of all buildings and the exposed surface of all retaining walls shall be faced with natural stone or brick. Any other material must be approved by James A. Folkner or his representative designated by notice recorded in the Register's Office of Hamilton County, Tennessee.
4. All homes shall be constructed to face the street or road of the subdivision on which the lot is located. Houses on corner lots may face either street. No lot may be entered directly from Roberts Mill Road.
5. No live trees shall be cut within 10 feet of any side lot line unless approved by James A. Folkner or his representative designated by notice recorded in the Register's Office of Hamilton County, Tennessee.
6. Developer, James A. Folkner, his heirs, successors and assigns may appoint an architectural review committee consisting of himself, an architect and one other person to review house plans, landscape plans and make any minor exceptions to these Restrictive Covenants, as may be necessary.

Except as previously and hereby amended, said Restrictive Covenants remain in full force and effect..